International Metal Specialties, Inc. *and* Iron Workers Local No. 455, a/w International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO. Case 2–CA–25882

November 15, 1993

DECISION AND ORDER

BY CHAIRMAN STEPHENS AND MEMBERS DEVANEY AND RAUDABAUGH

On August 9, 1993, Administrative Law Judge James F. Morton issued the attached decision. The Respondent filed exceptions, the General Counsel and the Charging Party each filed a brief in answer to the Respondent's exceptions, and the General Counsel filed a brief in support of the judge's decision.

The National Labor Relations Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings, and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, International Metal Specialties, Inc., Bronx, New York, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

Eric Brooks, Esq. and *James Paulsen, Esq*., for the General Counsel.

James M. Bernbach, Esq., of New York City, New York, counsel for International Metal Specialties, Inc.

Jerome Tauber, Esq. (Sipser, Weinstock, Harper Harper and Dorn), of New York City, New York, for Iron Workers Local No. 455, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO.

DECISION

STATEMENT OF THE CASE

JAMES F. MORTON, Administrative Law Judge. The complaint alleges that, since July 17, 1992, International Metal Specialties, Inc. (the Respondent) has engaged in an unfair labor practice within the meaning of Section 8(a)(1) and (5) of the National Labor Relations Act (the Act). It is alleged to have insisted, as a condition of resuming negotiations for a collective-bargaining agreement, that the Union, Iron Workers, Local No. 455, a/w International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO, drop its lawsuit to collect delinquent contributions owed by the Respondent to various Funds, as required under the expired contract between the Respondent and the Union.

I heard this case on June 8, 1993, in New York City. On the entire record, including my observation of the demeanor of the witnesses, and after consideration of the brief filed by the General Counsel and the Respondent's letter brief, I make the following

FINDINGS OF FACT

I. JURISDICTION—LABOR ORGANIZATION

The Respondent fabricates metal cabinets. In its operations annually, it meets the Board's standard for asserting jurisdiction.

The Union is a labor organization as defined in Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICE

The Union has represented the Respondent's production and maintenance employees for many years. The last signed contract covering these employees extended the prior contract, with modifications, until May 31, 1991. On March 18, 1991, the Union served notices to terminate the contract and it requested the Respondent to meet with it for the purpose of negotiating a renewal agreement.

On September 30, 1991, the Union filed a petition in the Supreme Court of the State of New York, county of New York for an order confirming an arbitration award in which the Respondent was found to have been delinquent in making contributions, required by the contract in effect then, to various benefit funds. Later in 1991, the sheriff executed on the judgment obtained therein and seized moneys from the Respondent's bank account.

On March 18, 1992, the Union served notice on the Respondent that it filed another such petition to enforce a similar arbitration award, dated February 7, 1992.

William Colavito, the Union's president, testified that, sometime in June 1992, he met with Thomas De Rosa, the Respondent's president, at the Respondent's shop. Colavito gave the following account as to the meeting. When he sought to discuss the Union's demands for a renewal contract, De Rosa said that he was told by his attorney not to negotiate because moneys owed to the Union by the Respondent were obtained improperly and that ''unless (the Union washes) away what (the Respondent owes, the Respondent is) not going to negotiate.'' Colavito protested that that matter, referring to the moneys owed, was a separate issue from negotiations and that the Respondent had an obligation to negotiate. De Rosa declined to negotiate.

As to that meeting, De Rosa's account was as follows. Colavito asked to talk about a contract and that he responded that he was told by his attorney ''not to discuss contract'' until the Union cleared up the improprieties it used in enforcing an arbitration award.

Colavito testified also that, thereafter, he placed several telephone calls to the Respondent's office and left messages for De Rosa to meet with him to negotiate a renewal contract. His calls went unanswered.

It is well-settled that a party cannot insist to impasse in bargaining that the other party abandon litigation. See *Plattdeutsche Park Restaurant*, 296 NLRB 133, 137 (1989), a case closely parallel to the instant case, factually. See also *Stackpole Components Co*., 232 NLRB 723, 732 (1977); *Carpenters Local 964 (Carpenters & Suppliers Assn.)*, 181 NLRB 948 (1970), enfd. 447 F.2d 643 (2d Cir. 1971).

The evidence before me compels a finding that the Respondent has, since June 1992, failed and refused to negotiate with the Union and that it has declined to do so for an unlawful reason, the Union's refusal to defer to the Respondent's demand that it withdraw from its litigation seeking

moneys from Respondent to be paid to various benefit funds, as provided in the expired contract.

CONCLUSIONS OF LAW

1. The Respondent is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization as defined in Section 2(5) of the Act.

3. The Respondent has engaged in an unfair labor practice within the meaning of Section 8(a)(1) and (5) of the Act by having conditioned negotiations with the Union for a renewal conditioned collective-bargaining agreement on the Union's withdrawing litigation it was pursuing to collect from the Respondent moneys owed under the prior contract to various benefit funds.

4. This unfair labor practice affects commerce within the meaning of Section 2(6) and (7) of the Act.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

ORDER

The Respondent, International Metal Specialties, Inc., Bronx, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to negotiate a renewal collective-bargaining agreement with Iron Workers Local No. 455, a/w International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO, by insisting, as a condition precedent thereto, that the Union withdraw litigation it was pursuing to collect moneys for various benefit funds, as provided for in the expired contract.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights under Section 7 of the Act.

2. Take the following action necessary to effectuate the policies of the Act.

(a) Notify the above-named Union in writing that is is ready and willing to meet with it to negotiate a renewal contract, regardless of any claims for past due moneys being sought via arbitration or related litigation.

(b) On request by the Union, bargain collectively with it concerning wages, hours of work, and other terms and conditions of employment respecting the unit of employees of the Respondent which the Union represents.

(c) Post at its plant in the Bronx, New York, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 2, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT insist that Iron Workers Local No. 455, a/w International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO, withdraw from litigating its claims for moneys due to various benefit funds before we agree to bargain with it towards a renewal contract.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights under Section 7 of the Act.

WE WILL notify, in writing, the above-named Union that we are ready and willing to bargain with it, regardless of any litigation over moneys due benefit funds.

WE WILL, on request by the Union, bargain collectively with it towards a renewal contract.

INTERNATIONAL METAL SPECIALTIES, INC.